Supreme Court, U.S.
FILED

98 913 OCT 6 - 1998

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

ROBERT D. MUELLER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Mandamus to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF MANDAMUS

ROBERT D. MUELLER
311 Maple Street
Downers Grove, Illinois 60515
(630) 810-9708

Pro Se

35 pp

QUESTIONS PRESENTED FOR REVIEW

Did the errors in the District Court of the Northern District of Illinois and the subsequent denial of a hearing by the Circuit Court for the Seventh Circuit violate due process and the right of appeal?

Are homosexual Americans denied equal protection under the tax laws and other statutes of the United States of America?

Is the Defense of Marriage Act constitutional?

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PETITION FOR WRIT OF MANDAMUS

The Petitioner requests that the Supreme Court (a) exercise this Court's supervisory power with respect to the district and appellate courts to overrule the Seventh Circuit's ruling dismissing the appeal because of lack of jurisdiction (Appendix 1) and (b) issue a writ of mandamus ordering the Appellate Court to proceed with the appeal process to decide an important issue of federal law that should be examined by the Federal Courts of the United States of America.

JURISDICTION

Under 28 U.S.C. Sec. 1291, the Supreme Court of the United States shall have jurisdiction over decisions of Courts of Appeals following all final decisions of the district courts of the United States. Final judgment was entered in this action by the Honorable Ann C. Williams on June 2, 1998, on appeal from Magistrate Judge Ronald Guzman on May 5, 1997. On August 25, 1998, the Seventh Circuit Court denied hearing of an appeal.

This case was originally appealed to the Seventh Circuit as 97-2161, but it was returned to the District Court for the Northern District of Illinois on August 19, 1997, pending a final judgment by a District Judge under Federal Rule of Appellate Procedure 42(b). In the Seventh Circuit, the case was identified as 98-2629.

REASONS FOR GRANTING THE WRIT

From the Appellant's understanding, normally this appeal should first go to the Chief Judge of the Appellate Court. However, Chief Judge Posner's books have been a resource for this case and are quoted in several of the documents. Therefore, it would be inappropriate to proceed in this manner, making the Supreme Court the appropriate Court for this request.

The Appellate Court does have jurisdiction in this matter for several reasons:

1. In the initial appeal process to the District Court judge, the appellant's lawyer was allowed to withdraw without filing an *Anders* brief while the appellant was incarcerated. No new lawyer was appointed.

Three times in the appeal process the District Court has failed to notify the Appellant of proceedings in this case (Appendix 8):

a. Docket #84, a hearing transcript, was created and filed without the Appellant's knowledge. When discovered, he contacted Judge Williams clerk Doris Love who told him to get his own copy. This is not documented, although Judge Williams' office may have a record of the call.

b. Docket #85, the affirming order of Judge Williams has yet to be received from the District Court although it is alleged to have been mailed on 6/9/98. This is documented in item #86, Appellant's letter dated 6/19/98 (Appendix 7).

c. Docket #93, the decision on the certificate of appealability alleged to have been mailed on 7/9/98 has yet to be received from the District Court. The Appellant saw this only when the U.S. Attorney

filed it as an attachment to the rebuttal of the jurisdictional statement (Appendix 3).

In addition, the initial appeal rebuttal, (Appendix 8) #1 on 12/17/97, is N/A. Then on what was the Judge Williams' initial affirming order based?

3. Decisions of the Seventh Circuit are being asked to be reviewed, primarily *United States v. Cheek*, 931 F.2d 1206 (7th Cir. 1991). This is only within the jurisdiction of either the Seventh Circuit or the Supreme Court, not the District Court.

4. The constitutionality of certain acts of Congress is being challenged, primarily the Defense of Marriage Act and its ramifications. This law adversely affects an estimated 15-25 million Americans (actual numbers unavailable as Congress will not fund a study). Again this is well within the jurisdiction of the Appellate Court.

To address the specific grounds on which the Appellate Court's order is based, argument 1 is presented. Even if the documents were mailed as alleged, a minimum of 5 days would need to be added to the docketing date before the clock started ticking. That would put the certificate of appeal motion within the ten day window. And within the ten day window is a letter from the Appellant stating he did not receive the ruling in question. Then we have Judge Williams' decision on 7/7/98 that states "Because Mueller's intended appeal to the Seventh Circuit is a direct appeal from his conviction, Mueller has a right of appeal and therefore does not need this court to issue a certificate of appealability." Since Judge Williams and the Appellant have never met, how she knew the Appellant's intentions eludes him, but she effectively turned jurisdiction over

to the Appellate Court as late as the middle of July, 1998, affirming the right of appeal. The Appellant has yet to receive this ruling from the District Court, again allegedly mailed. A request was made in a letter dated July 15, 1998 (Appendix 19).

The motion for certificate of appealability (Appendix 13), Judge Williams' ruling on that motion, and the Appellant's letter were all filed in Appellate Court, not by the Appellant, but by the U.S. Attorney's office as supporting documentation in the response to Defendant-Appellant's jurisdictional memorandum. These were filed without rebuttal. Therefore, the Appellate Court had no reason to believe these were not honest and truthful statements of the circumstances surrounding this case. The Appellant had no reason to file a rebuttal; if he did it would contain the same documents the U.S. Attorney filed, with the exception of Judge Williams' order which he has not received.

The appeal brief was filed on August 10, 1998, as required (Appendix 21). It deals with very basic civil rights for a group of Americans numbering in the millions.

On practical grounds, because of the errors in the District Court, no one can determine a valid date when the ten-day clock should have started ticking. To dismiss this appeal based on a questionable ten day period is a denial of due process, right of appeal, and basic civil rights.

On Constitutional grounds, important rulings need to be made. The judicial process should be continued in the Court with current jurisdiction, the United States Court of Appeals for the Seventh Circuit.

The Appellant respectfully requests that the Supreme Court overrule the Appellate Court's order, instructing it to proceed with the appeal process.

This document should be construed liberally under the teaching of *Haines v. Kerner*, 404 U.S. 519 (1972).

CONCLUSION

WHEREAS, the rights to counsel and to appeal were denied the Petitioner. That the Petitioner did in fact fulfill his obligations when properly notified, the appeal process should be sent back to the Seventh Circuit for continuation.

The Constitutional questions being raised do need to be addressed by the federal courts, and, therefore, further hearings on these matters should be ordered as requested.

In addition the Defense of Marriage Act should be reviewed as to its constitutionality. This Act is a defense of discrimination that has shown no signs of letting up.

The Appellant has standing and has shown the harm the prejudice represented by this Act causes. Laws of this nature have no place in the laws of the United States, and Congress needs to be told this act and others in its vein are suspect at best and, most probably, are unconstitutional.

Respectfully submitted,

ROBERT D. MUELLER
311 Maple Street
Downers Grove, Illinois 60515

Pro Se

APPENDIX

App. 1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

August 25, 1998

Before

Hon. William J. Bauer, *Circuit Judge*
Hon. Joel M. Flaum, *Circuit Judge*
Hon. Terence T. Evans, *Circuit Judge*

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* No. 98-2629 v. ROBERT D. MUELLER, *Defendant-Appellant.*	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 96 CR 243 Ann Claire Williams, Judge.

ORDER

On consideration of the "JURISDICTION MEMORANDUM" filed by defendant-appellant on July 14, 1998, and the "RESPONSE TO DEFENDANT-APPELLANT'S JURISDICTIONAL MEMORANDUM" filed by plaintiff-appellee on July 23, 1998, and review of the short record.

It is ORDERED that this appeal is DISMISSED for lack of jurisdiction.

Rule 4(b) of the Federal Rules of Appellate Procedure requires that a notice of appeal in a criminal case be filed in the district court within 10 days of the entry of the judgment or order appealed. In this case the order

affirming Mueller's conviction and sentence (of the magistrate judge) was entered on June 9, 1998, and the notice of appeal was filed on June 26, 1998, seven days late. The district court has not granted an extension of the appeal period, see Rule 4(b), and this court is not empowered to do so, see Fed. R. App. P. 26(b).

The court notes that Mueller filed a motion requesting a certificate of appealability on June 24, 1998. Even if that document contained all the information that Fed. R. App. P. 3(c) requires and therefore could be treated as a notice of appeal, *see Smith v. Barry*, 112 S.Ct. 678 (1992); *Bell v. Mizell*, 931 F.2d 444 (7th Cir. 1991), it too was filed beyond the 10 day appeal period.

App. 3

[Dated July 14, 1998]

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,	)	98-2629
Plaintiff-Appellee,	)	
v.	)	
	)	Ann Claire Williams
ROBERT D. MUELLER,	)	Judge
Defendant-Appellant.	)	

JURISDICTIONAL MEMORANDUM

In response to the order dated July 10, 1998, the appellant has been very careful to document the process in this appeal due to the issues involved.

The order filed by Judge Williams is marked as being mailed to the appellant on June 9, 1998. The appellant has still not received any such document. He had to go down to the courthouse and make a copy of it himself.

Within the docket is an earlier letter informing all concerned parties of the appellant's address; therefore, there is no excuse for the District Court to have erred in the mailing, yet it looks like it has.

The Appellant's steps in this matter are also in a follow-up letter that has been docketed.

Again the Appellant has taken extraordinary steps in the appeal process, and he took care to make sure everything was docketed.

Therefore, the Appellant is well within any filing deadlines, because he corrected the mistakes made within the District Court and he continued to show interest in the appeal because he had to discover the docketing of Judge William's order by himself.

This motion should be "construed liberally" under the teaching of *Haines v. Kerner*, 404 U.S. 519 (1972).

App. 5

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

July 10, 1998

By the Court:	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
UNITED STATES OF AMERICA,	)	
Plaintiff-Appellee,	)	
	)	No. 96 CR 243
No. 98-2629 v.	)	
	)	
ROBERT D. MUELLER,	)	Ann Claire Williams, Judge.
Defendant-Appellant.	)	

ORDER

Rule 4(b) of the Federal Rules of Appellate Procedure requires that a notice of appeal in a criminal case be filed in the district court within 10 days of the entry of the judgment or ordered appealed. In this case the order affirming Mueller's conviction and sentence (of this magistrate judge) was entered on June 9, 1998, and the notice of appeal was filed on June 26, 1998, seven days late. The district court has not granted an extension of the appeal period, see Rule 4(b), and this court is not empowered to do so, see Fed. R. App. P. 26(b). Accordingly,

IT IS ORDERED that appellant, on or before July 23, 1998, file a brief memorandum stating why this appeal should not be dismissed for lack of jurisdiction. Briefing shall be suspended pending further court order.

If appellant wishes to request an extension of time in which to file the notice of appeal, he should file an appropriate motion in the district court, not this court, as soon as possible. Appellant's jurisdictional memorandum should include a discussion of the status of any such motion.

NOTE: Caption document "JURISDICTIONAL MEMORANDUM." The filing of a Circuit Rule 3(c) Docketing Statement does not satisfy your obligation under this order.

June 19, 1998

Clerk, United States District Court
Northern District of Illinois
219 South Dearborn
Chicago, IL 60604

RE: Case 96CR243

Dear Sir or Madam:

According to your records, a minute order was issued on June 2 by Judge Williams in this case, 96 CR 243. It is marked as being sent on June 9, but I have yet to receive a copy.

I'm not sure what address it was sent to, but there is a letter docketed which informed all necessary parties of my current mailing address.

I will stop by the courthouse on Friday, June 19, to pick up a copy of that order and to drop off a copy of this letter for docketing. Once I get that copy, I'll proceed with the next steps in the case.

Very truly,

Bob Mueller

Mailing Address:	Chicago Address:	Home Address:
3712 N. Broadway, #145 Chicago, IL 60613	4128 N. Clarendon, #2 Chicago, IL 60613	1702 16th Ave. S, #3 Seattle, WA 98144

cc: Judge Ann C. Williams
Assistant U.S. Attorney Charles Ex

Proceedings include all events TERMED APPEAL
96cr243-ALL USA v. Mueller APPEAL CONMAG

12/10/97 81 MOTION by Robert D Mueller for oral argument; Notice of filing (Temporarily unavailable for docketing) (pp) [Entry date 12/18/97] [Edit date 12/18/97]

12/12/97 82 MINUTE ORDER of 12/12/97 by Hon. Ann C. Williams as to Robert D Mueller: Defendant's emergency motion to reconsider appointment of counsel is denied. [75-1] Defendant's oral motion for oral arguments is denied. [0-1] Defendant's reply to be filed by 12/19/97. Status hearing held. Mailed notice (pp) [Entry date 12/18/97]

12/17/97 1 N/A APPELLANT rebuttal by Robert D. Mueller; (Attachments); Notice of filing (pp) [Entry date 12/22/97]

4/14/98 83 LETTER from Bob Mueller (dmk) [Entry date 04/21/98] [Edit date 04/21/98]

4/30/98 84 TRANSCRIPT of proceeding as to Robert D. Mueller held before Hon. Edward A. Bobrick on 07/31/96 (pp) [Entry date 04/30/98]

6/2/98 85 MINUTE ORDER of 6/2/98 by Hon. Ann C. Williams as to Robert D Mueller: The court affirms Mueller's conviction and sentence. (See reverse of minute order.) Mailed notice (dmk) [Entry date 06/09/98]

6/22/98 86 LETTER from defendant dated 6/19/98. (emd) [Entry date 06/24/98]

6/22/98 88 LETTER from Bob Mueller (dmk) [Entry date 06/26/98]

6/24/98 87 MOTION by Robert D. Mueller requesting certificate of appealability (Attachments); Notice of filing (dmk) [Entry date 06/25/98]

6/26/98 89 NOTICE OF APPEAL by Robert D. Mueller from minute order [85-2] Notice of Filing (Fee Paid) (ls) [Entry date 06/30/98]

6/26/98 90 LETTER regarding docketing statement acknowledged by Robert D. Mueller. (ls) [Entry date 06/30/98]

7/6/98 92 MINUTE ORDER of 7/6/98 by Hon. Ann C. Williams as to Robert D. Mueller: The clerk of court is directed to send all notices to defendant, Robert D. Mueller at 4128 N. Clarendon, #2, Chicago, IL 60613. No notice (mk) [Entry date 07/07/98] [Edit date 07/08/98]

7/7/98 93 MINUTE ORDER of 7/7/98 by Hon. Ann C. Williams as to Robert D. Mueller: The court denies Mueller's motion requesting certificate of appealability as moot [87-1]. (See reverse of minute order.) Mailed notice (emd) [Entry date 07/09/98] [Edit date 07/09/98]

App. 10

[Dated June 2, 1998]

(Reserved for use by the Court)

ORDER

On April 10, 1996, defendant Robert Mueller ("Mueller") was charged with three counts of violating 26 U.S.C. § 7203 by willfully failing to file federal income tax returns for the tax years 1989 through 1991. Mueller waived his right to a jury trial and proceeded to a one day bench trial before Magistrate Judge Guzman. On November 19, 1996, Magistrate Judge Guzman found Mueller guilty on all three counts. Magistrate Judge Guzman sentenced Mueller to thirteen months imprisonment on May 1, 1997. Mueller timely filed his notice of appeal. For the following reasons, this court affirms Mueller's conviction and sentence.

Mueller first argues that the evidence at trial did not prove that his failure to file tax returns was willful. In challenging the sufficiency of the evidence, Mueller bears a heavy burden. *United States v. Hubbard*, 22 F.3d 1410, 1415 (7th Cir. 1994). "If the evidence established that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, the court must uphold the verdict." *Id.*

The court finds that Magistrate Judge Guzman had ample evidence upon which to find Mueller willfully violated 26 U.S.C. § 7203. Under § 7203, "willfulness" means a voluntary, intentional violation of a known legal duty. *Cheek v. United States*, 498 U.S. 192, 201 (1991). Mueller admitted at trial that he knew of his obligation to pay taxes and that he deliberately refused

to pay taxes because he disagreed with government spending practices. In light of this evidence and the other extensive circumstantial evidence that Mueller ignored his known legal obligation to pay taxes, this court affirms Mueller's conviction on all three counts. Mueller posits several constitutional, social, and political arguments regarding governmental spending and discrimination towards homosexuals. Those arguments, however, do not relieve Mueller of his legal duty to pay taxes. *See generally United States v. Cheek*, 931 F.2d 1206, 1207-08 (7th Cir. 1991); *United States v. Pilcher*, 672 F.2d 875, 877 (11th Cir. 1982). The court therefore rejects Mueller's arguments.

Mueller next asserts that Magistrate Judge Guzman committed a host of errors in Mueller's sentence. This court finds that Mueller waived his right to raise these arguments on appeal because he did not raise these issues before Magistrate Judge Guzman. A defendant who fails to raise a challenge to his sentence before the sentencing judge waives his right to appellate review of those issues. *United States v. Jackson* 974 F.2d 57, 60 (7th Cir. 1993). Nevertheless, even if Mueller had preserved these sentencing issues for review, the court finds them entirely without merit.

By moving to Seattle, Washington without first obtaining Magistrate Judge Guzman's permission or without notifying pretrial services of his location, Mueller certainly deserved the two point enhancement for obstruction of justice under U.S.S.G. § 3C1.1. *See United States v. Gilleven*, 81 F.3d 70, 71-72 (7th Cir. 1996). Similarly, the calculation of tax loss for years beyond the statute of limitations was appropriate. *See United States v. Valenti*, 121 F.3d 327, 334 (7th Cir. 1997);

United States v. Matthews, 116 F.3d 305, 308 (7th Cir. 1997). Finally, this court's review of the record shows that Magistrate Guzman neither miscalculated the sentence Mueller must serve, nor did the Magistrate Judge consider any improper information at Mueller's sentencing. Accordingly, because Mueller waived his right to appellate review of his sentence and, in any event, those arguments lack merit, the court affirms the sentence imposed by Magistrate Judge Guzman.

The court affirms Mueller's conviction and sentence.

[Dated June 24, 1998]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA	)	
	)	96 CR 243
v.	)	Judge Ann C. Williams
ROBERT MUELLER	)	

MOTION REQUESTING CERTIFICATE OF APPEALABILITY

As noted in the attached rules, the appeal process when starting with a magistrate judge is very confusing, but it allows the appellant to now appeal to the Seventh Circuit. To do so, it is the understanding of the appellant that he must first request a certificate of appealability from the District Judge hearing the first appeal. The Appellant requests the certificate of appealability be granted for the following reasons:

1. The District Judge failed to take the appeal seriously and violated the right of first appeal and right to counsel. The Appellant tried to save this appeal by filing motions docketed as #68, #75, and #81, with attached documentation. These motions show the need for an *Anders* brief to be filed before counsel is allowed to withdraw, requirements that counsel be available at all stages of the court process, show that requests for access to outside resources were denied (the U.S. Attorney

did use resources beyond a law conversations of about five minutes with the Court library), and show requests for oral arguments were denied, leaving the Appellant with two telephone conversations of about five minutes with the Court.

2. The conclusion of the District Judge that the right of appeal was waived is erroneous, again showing failure to take the appeal seriously. There was no waiver of appeal. The hearing judge was the sentencing judge; a presentence statement presented to the sentencing judge dealt with the issues of the appeal; there is no document signed by the appellant relinquishing his right to appeal. This was pointed out in the appeal rebuttal, but the District Judge does not seem to have read it. Raising the issues in a written document presented to the sentencing judge certainly fulfills the requirement of *United States v. Jackson.* The District Judge and the U.S. Attorney are trying to make this requirement an oral requirement, an argument that has never been upheld.

3. The Appellant took extraordinary steps as cited in paragraph 1 to save the appeal process before the District Judge.

4. The Constitutional issues raised in the case are valid and do need to be raised in the federal courts. All one has to do is pick up a newspaper or watch a news program today to know this is true. *Cheek* is addressed in the appeal brief. That case is being used to ignore the issues raised by this case. *Romer*, 116 S.Ct. 1620, certainly overrides *Cheek* in this instance. *Cheek* cannot be used as an excuse to ignore major issues that have no other forum. The Seventh Circuit should take

this opportunity to review that decision and the narrow definition of willfulness it spawned.

5. The Appellant has standing and has shown harm from the current laws. That in itself makes this case appealable to the next level. The District Judge shows no acknowledgment of the Appellant's arguments. If these arguments had been taken seriously, the United States might have avoided the embarrassment of some Congressmen's recent statements. At the District level, this may be correct or it may be avoiding a tough decision. That decision should now be moved to the next level.

6. The move to Seattle should not have been necessary in the United States of America, but the documentation in the appeal rebuttal speaks for itself. The Appellant has presented documentation that exceeds the extraordinary burden the District Judge cited. The Congressional Records alone would be more than a rational person could tolerate were it not for the threat of imprisonment or actual imprisonment that one must endure to get these issues heard. Unfortunately, because these issues have still not been heard, all one has to do is pick up a newspaper and read more of the same discrimination this trial attempts to address.

All the Appellant can do is continue to offer the Courts the opportunity to address these issues. This opportunity should be given to the Seventh Circuit. Therefore, the certificate of appealability should be granted. A notice of appeal will be filed there soon, in case the Appellant is incorrect about the process.

This motion should be "construed liberally" under the teaching of *Haines v. Kerner*, 404 U.S. 519 (1972).

Respectfully submitted,

_____

Robert D. Mueller
1702 16th Avenue S, #3
Seattle, WA 98144

Chicago address:

4128 N. Clarendon, #2
Chicago, IL 60613
(773) 929-5269

Minute Order Form (06/97)

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS

C. Ex
1995R10993

Name of Assigned
Judge or Magistrate: Ann C. Williams

CASE NUMBER 96 CR 243 DATE 7/7/98

CASE TITLE United States v. Mueller

* * * * *

DOCKET ENTRY:

(1) ☐ Field motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing [held/continued to] [set for/re-set for] on _____ at _____.

* * * * *

(10) ☐ [Other docket entry]

The court denies Mueller's motion for a certificate of appealability as moot.

(11) ☒ [For further detail see order on the reverse side of the original minute order.]

* * * * *

[Dated July 7, 1998]

(Reserved for use by the Court)

ORDER

After consenting to a bench trial before Magistrate Judge Guzman, defendant Robert Mueller was found guilty on three counts of willfully failing to file federal income tax returns in violation of 26 U.S.C. § 7203. Magistrate Judge Guzman sentenced Mueller to twelve months imprisonment on each of counts 1 and 2, with those sentences to run concurrent with one another. Magistrate Judge Guzman also sentenced Mueller to one month imprisonment on count 3, to run consecutive to Mueller's sentences on counts 1 and 2. Mueller than appealed his conviction and sentence to this court.

On June 2, 1998, this court issued an order affirming Mueller's conviction and sentence. On June 24, 1998, Mueller filed a motion for a certificate of appealability. Two days later, on June 26, 1998, Mueller filed a notice of appeal.

The court denies Mueller's motion for a certificate of appealability as moot. Because Mueller's intended appeal to the Seventh Circuit is a direct appeal from his conviction, Mueller has a right of appeal and therefore does not need this court to issue a certificate of appealability. *See United States v. Van Fossan*, 899 F.2d 636, 638 (7th Cir. 1990).

Received

July 13, 1998

In Docketing

July 15, 1998

The Honorable Ann C. Williams
Clerk, United States District Court
District Judge Northern District of Illinois
Northern District of Illinois
219 S. Dearborn, 20th Floor
Chicago, IL 60604

RE: Case 96 CR 243

Dear Judge Williams:

On Tuesday, July 14, 1998, when I was down at the courthouse to file a document in Appellate Court, I noticed several more documents had been docketed in this case that I have not received copies of.

I appreciate Judge Williams' action in re-notifying the Clerk that the Chicago address to use is 4128 N. Clarendon, #2, even though the Appellant's legal address is in Seattle. The Appellant had notified all parties earlier, but this merely got docketed and was not acted upon. Hopefully this will clear up the problem I had to address in Appellate Court so that all concerned parties are now advised of further action in this case.

I would request that the Clerk remail items that have been misdirected. This would include Judge Williams' ruling on the Certificate of Appealability. I am assuming the "moot" decision was due to the Appellate Court accepting the case, but that is mere conjecture right now.

Thank you for being a part of a major Constitutional challenge. It has been an experience I will never forget.

Yours truly,

Robert Mueller
1702 16th Avenue S, #3
Seattle, WA 98144

Chicago Address:
4128 N. Clarendon, #2
Chicago, IL 60613

cc: Charles Ex, Assistant U.S. Attorney

App. 21

[Filed August 10, 1998]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,	)	No. 98-2629
Plaintiff-Appellee,	)	Appeal from the United States District Court for the Northern District of Illinois
v.	)	
ROBERT MUELLER,	)	No. 96 CR 243
Defendant-Appellant.	)	Honorable Ann C. Williams

Appeal of matter heard before the Honorable Judge Ronald Guzman, reviewed by the Honorable Judge Ann C. Williams in the United States District Court for the Northern District of Illinois, docket number 96 CR 243-1 charged with willful failure to file tax returns in violation of Title 26 U.S.C. 7203.

This document should be construed liberally under the teachings of *Haines v. Kerner,* 404 U.S. 519 (1972).

Appellant Brief

Chicago Address:	Home/Legal Address:
4128 N. Clarendon, #2 Chicago, IL 60613	1702 16th Avenue S, #3 Seattle, WA 98144
773-929-5269	206-328-1174

* * * * *

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2. *In re Kowalski*, 478 N.W.2d 790, Minn. App. (1991)

3. *Romer v. Evans*, 116 S.Ct. 1620 (1996)

4. *United States v. Cheek*, 931 F.2d 1206 (7th Cir. 1991)

* * * * *

Statement of Issues

This case has two layers to the appeal—procedural and Constitutional.

The procedural issues are primarily in pre- and post-trial areas. The pre-trial questions involve public officials who fail to do their jobs and ineffectiveness of counsel, which resulted in obstruction of justice charges in the sentencing process. Post-trial questions involve the probation department's presentence report which involved omission of facts and statements not supported by trial proceedings which could be considered of an accusatory nature.

The Constitutional questions include due process, equal protection, separation of church and state, and cruel and unusual punishment. These questions are supported by an underlying natural law basis. With both the Magistrate and District Judges acknowledging constitutional issues were being raised, there is a question of what constitutes willfulness.

There is a fine distinction between willfulness and purposefulness; this was a purposeful action to raise questions in an open forum, and the issues are valid.

These issues are characterized by the question of whether the Defense of Marriage Act is constitutional or not. With both the District Judge and the prosecuting Attorney agreeing there is governmental discrimination against homosexuals, the Courts are being requested to take a more active role in reversing the current trend.

* * * * *

Summary of Argument

Homosexuals in the United States must endure strong prejudices both as individuals and for their families. These prejudices are embodied in local, state and federal law. A primary example of this codification of prejudice is in the tax laws at all levels, and, because homosexuals are a minority, due process in the legislative arena is not afforded them to address this prejudice. Judicial intervention is required.

The evidence submitted in the case raises natural law questions to the extent current science allows. With the belief that homosexuality is natural and not choice, further constitutional issues of separation of church and state and cruel and unusual punishment arise. Even in the defense of marriage debates in Congress, the major argument is a religious one, not a secular one required by the Constitution. And cruel and unusual punishment arises from the permanent classification of homosexuals to a single status for life if they are true to their biological nature, funding the benefits of other families without receiving the same benefits for their own families.

Even in the post-trial proceedings these prejudices are apparent in presentence reports prepared and approved by the probation department of the Northern District of Illinois.

Therefore the question of willfulness versus purposefulness of the actions taken is being raised in this appeal. The appellant believes these arguments are valid and that there was no other reasonable way to have these arguments heard in a public forum.

In addition there are the more specific issues to this case of whether the trial should have been held here in Illinois or moved to another district. This involves extenuating circumstances of public officials in the Northern District of Illinois not doing their jobs, and the effect it had on this trial.

* * * * *

Conclusion

WHEREAS, the conduct of the appellant was not willful and there was no obstruction of justice, that in fact the conduct was for the purpose of raising valid Constitutional questions and protecting his family, the conviction of the appellant should be overturned.

In addition the Defense of Marriage Act should be declared unconstitutional. This Act is a defense of discrimination that has shown no signs of letting up.

The Appellant has standing and has shown the harm the prejudice represented by this Act causes. Laws of this nature have no place in the laws of the United States, and Congress needs to be told these acts and others in its vein are suspect at best and, most probably, are unconstitutional.

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